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E.O. 12958: N/A

TAGS: [KTIA](#) [MARR](#) [MOPS](#) [PREL](#) [PM](#) [TD](#)

SUBJECT: COUNTERPROPOSAL - AGREEMENT WITH TRINIDAD AND TOBAGO ON THE STATUS OF U.S. FORCES FOR THE SUMMIT OF THE AMERICAS AND OTHER EVENTS IN 2009.

REF: A. 2008 STATE 15777

[1](#)B. STATE 7413

[1](#)C. KUSNITZ EMAIL DATED 6 FEBRUARY

[1](#)1. (U) THIS IS AN ACTION REQUEST. SEE PARAGRAPHS 2, 3, 5, 6, and 7.

[1](#)2. (SBU) On February 6, 2009, the Government of the Republic of Trinidad and Tobago (GOTT) submitted to post a diplomatic note with the GOTT response to the U.S. request for a status of forces agreement that would cover calendar year 2009 mutually agreed activities, including the Summit of the Americas (no. 027). As stated in their February 6, 2009 diplomatic note, the GOTT intends to provide status protections to U.S. personnel by designating the United States under its Visiting Forces Act (VFA) and agreeing to additional terms not covered by the VFA. With certain changes, i.e., those which are incorporated in paragraph 4 of the diplomatic note, the United States finds this proposal acceptable for purposes of ensuring adequate status protections for the Summit and other mutually agreed activities in 2009. The United States changes to the GOTT's counterproposal appear as noted in bracketed text (additions and deletions). Please note that "if needed" talking points, which should be deleted in the diplomatic note presented to the GOTT, are embedded in the text of the note for post,s use in discussions with GOTT counterparts.

[1](#)3. (SBU) U.S. DoD personnel will be temporarily present in Trinidad and Tobago in connection with the Summit of the Americas from March 24, 2009 through April 24, 2009. Post is requested to present the notes in paragraphs 4 and 5 to the GOTT regarding the status of United States DoD personnel participating in these activities.

[1](#)4. (U) BEGIN TEXT OF DIPLOMATIC NOTE:

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of Trinidad and Tobago and has the honor to refer to recent discussions between representatives of our two Governments regarding issues related to United States military and civilian personnel (defined as members of the United States Armed Forces and civilian employees of the United States Department of Defense, respectively, hereafter referred to collectively as United States personnel) and United States contractors (defined as non-Trinidad and Tobago companies and firms), and their employees who are not nationals of Trinidad and Tobago, under contract to the United States Department of Defense, who may be temporarily present in Trinidad and Tobago in connection with calendar year 2009 mutually agreed activities, including the Summit of the Americas event from March 24, 2009 to April 24, 2009.

As part of these 2009 mutually agreed activities, (ADDITION: the Embassy proposes) that United States personnel may enter and exit Trinidad and Tobago with United States identification and with collective movement or individual travel orders; that Trinidad and Tobago shall accept as valid all professional licenses issued by the United States, States thereof or their political subdivisions to United States personnel for the provision of services to authorized personnel; and that Trinidad and Tobago authorities shall accept as valid, without a driving test or fee, driving licenses or permits issued by the appropriate United States (DELETION: personnel) (ADDITION: authorities) (IF NEEDED TALKING POINT: By using the term authorities, this should eliminate the GOTT need for their suggested addition, deleted here, in para 10.) to United States personnel for the operation of vehicles.

The Embassy further proposes that United States personnel be authorized to wear uniforms while performing official duties and to carry arms while on duty if authorized to do so by their orders.

The Government of Trinidad and Tobago recognizes the particular importance of disciplinary control by United States Armed Forces authorities over United States personnel (DELETION: and subject to the laws of Trinidad and Tobago) and authorizes the Government of the United States to exercise criminal jurisdiction over United States personnel while in Trinidad and Tobago (IF NEEDED TALKING POINT: This is not a waiver of GOTT jurisdiction but an ability for the USG to exercise military justice) (DELETION: except in those cases of particular importance to the Republic of Trinidad and Tobago, if Trinidad and Tobago determines that the case of particular importance, it would communicate such a determination to the United States authorities within fifteen (15) days of the discovery of the alleged offense giving rise to such a case.)

The Government of the Republic of Trinidad and Tobago shall designate the United States of America in accordance with the Visiting Forces Act, Act No. 8 of 2007, such designation to be for the duration of 2009.

(ADDITION: The Government of Trinidad and Tobago confirms that under section 5 of the Visiting Forces Act, United States personnel are immune from the civil and criminal jurisdiction of Trinidad and Tobago in respect to actions taken in the course of their official duties. The Embassy further proposes that, in the exercise of its sovereignty, the Government of Trinidad and Tobago waive its right to exercise criminal jurisdiction over United States personnel for actions not taken in the course of their official duties.) (IF NEEDED ADDITION IF GOTT OBJECTS TO FULL WAIVER: except those cases of particular importance to the republic of Trinidad and Tobago. If Trinidad and Tobago determines that a case is of particular importance, it shall communicate such a determination to the United States authorities within fifteen (15) days of the discovery of the alleged offense giving rise to such a case. If Trinidad and Tobago does not communicate this determination to the United States within fifteen (15) days of the discovery of the alleged offense giving rise to such a case, the Government of Trinidad and Tobago shall be deemed to have waived its right to exercise criminal jurisdiction over United States personnel for the alleged offense(s).)

The Embassy further proposes that the United States Department of Defense and United States personnel shall not be liable to pay any tax or similar charge assessed in connection with activities under this agreement within Trinidad and Tobago and that the United States Department of Defense and United States personnel may import into, export out of, and use in Trinidad and Tobago any personal property, equipment, supplies, materiel, technology, training, or services in connection with activities under this Agreement. Such importation, exportation, and use shall be exempt from any inspection, license, other restrictions, customs duties, taxes, or any other charges assessed within Trinidad and

Tobago. (DELETION: The Government of the United States of America shall certify that the aforementioned items imported by United States personnel are for purposes connected to activities under this agreement.) (ADDITION: The Government of the United States certifies that the aforementioned items imported by United States personnel shall be for purposes connected to activities under this agreement.) The Governments of the United States of America and Trinidad and Tobago shall cooperate to take such measures as may be necessary to ensure the security and protection of United States personnel, property, equipment, records, and official information in Trinidad and Tobago.

The Embassy proposes that vessels and vehicles operated by or, at the time, exclusively for the United States Department of Defense may enter, exit, and move freely within the territory of Trinidad and Tobago except for those areas where access may be restricted, and that such vehicles (whether self-propelled or towed) shall not be subject to the payment of overland transit tolls. Vessels and aircraft owned or operated by or, at the time, exclusively for the United States Department of Defense shall not be subject to the payment of landing, parking, or port fees, pilotage charges, lighterage, and harbor dues at facilities owned and operated by the Government of Trinidad and Tobago. Aircraft owned and operated by or, at the time, exclusively for the United States Department of Defense shall not be subject to payment of navigation, overflight, terminal or similar charges when in the territory of Trinidad and Tobago. The United States Department of Defense shall pay reasonable charges for services requested and received at rates no less favorable than those paid by the Armed Forces of Trinidad and Tobago less taxes and similar charges. Aircraft and vessels of the United States Government shall be free from boarding and inspection.

The Embassy also proposes that the United States Department of Defense may contract for any materiel, supplies, equipment, and services (including construction) to be furnished or undertaken in Trinidad and Tobago without restriction as to choice of contractor, supplier, or person who provides such materiel, supplies, equipment, or services. Such contracts shall be solicited, awarded, and administered in accordance with the laws and regulations of the Government of the United States of America. Acquisition of articles and services in Trinidad and Tobago by or on behalf of the United States Department of Defense in connection with activities under this Agreement shall not be subject to any taxes or similar charges in Trinidad and Tobago.

The Embassy further proposes that United States contractors shall not be liable to pay any tax or similar charge assessed within Trinidad and Tobago in connection with activities under this Agreement and that such contractors may import into, export out of, and use in Trinidad and Tobago any personal property, equipment, supplies, material, technology, training, or services in fulfillment of contracts with the United States Department of Defense in connection with activities under this Agreement. Such importation, exportation, and use shall be exempt from any license, other restrictions, customs duties, taxes, or any other charges assessed within Trinidad and Tobago.

The Embassy proposes that United States contractors shall be granted the same treatment as United States personnel with respect to professional and drivers, licenses. (DELETION: where the driving permits are issued by countries other than the United States of America, the relevant United States authorities shall inform the government of Trinidad and Tobago of the same so that the necessary provisions can be put in place.)

The Embassy proposes that United States personnel shall have freedom of movement and access to and use of mutually agreed transportation, storage, training, and other facilities required in connection with activities under this Agreement.

The Government of Trinidad and Tobago recognizes that it may

be necessary for the United States Armed Forces to use the radio spectrum. The United States Department of Defense shall be allowed to operate its own telecommunication systems (as telecommunication is defined in the 1992 Constitution and Convention of the International Telecommunication Union). This shall include the right to utilize such means and services as required to ensure full ability to operate telecommunication systems, and the right to use all necessary radio spectrum as assigned by the relevant Trinidad and Tobago authorities for this purpose. Use of the radio spectrum shall be free of cost to the United States Government.

Further, the Embassy proposes that the Parties waive any and all claims (other than contractual claims) against each other for damage to, loss, or destruction of the other's property or injury or death to personnel of either Party's armed forces or their civilian personnel arising out of the performance of their official duties in connection with activities under this Agreement. Claims by third parties for damages or loss caused by United States personnel shall be resolved by the United States Government in accordance with United States laws and regulations.

Finally, the Embassy proposes further that our two governments, or their designated representatives may enter into implementing arrangements to carry out the provisions of this Agreement.

If the foregoing is acceptable to the Government of Trinidad and Tobago, the Embassy proposes that this note, together with the Ministry's reply to that effect, shall constitute an agreement between the two Governments, which shall enter into force on the date of the Ministry's reply.

END NOTE TEXT.

15. (U) Post is requested to inform the Department by front channel cable of the delivery of the draft note to the MFA and MOD officials and any discussions that take place on that occasion. Additionally, post is requested to provide periodic updates on the status of the draft SOFA with host nation officials.

16. (U) Any host country proposals for changes to the U.S. text should be referred to the Department. State POCs are Michael Fortin and Jonathan Mitchell, WHA/CAR (202-647-5088) and CDR Tom Herold, L/PM (202-647-7563). DoD POCs are Walter Earle, OSD/WHA (703-697-3327) and Ashley Richardson (703-697-3514).

17. (U) Upon conclusion of the exchange of notes, post should report the agreement by cable and fax a copy of the notes to L/T at 202-647-9844. Post should follow this up by sending the original Trinidad and Tobago note with a certified copy of the U.S. note to the Department, L/T, room 5420, att: Daphne Cook.
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